



## Written statement to the 57<sup>th</sup> regular session of the United Nations Human Rights Council

### Developments concerning the question of the death penalty

#### Changes in law and practice

#### ***Abolition of the death penalty or initiatives towards its abolition***

#### Legislative developments to the abolition of the death penalty

1. **Ghana:** In July 2023, Ghana's Parliament abolished the death penalty for all ordinary crimes, passing a Private Members Bill to amend the Criminal Offences (Amendment) Act. Ghana was the 29<sup>th</sup> country to abolish the death penalty in Africa and the 124<sup>th</sup> globally. At the time of abolition, there were 170 men and 6 women on death row. Their sentences will be replaced by life imprisonment.<sup>1</sup>
2. Ghana still retains the death penalty for certain military offences and for Treason. In July 2023, Ghana's Parliament also voted to pass the Armed Forces (Amendment) Bill abolishing the death penalty for all military offences, but the Bill has still not received Presidential Assent and remains in limbo. Abolishing the death penalty for Treason cannot be achieved by an ordinary act of parliament as this will require constitutional amendment. Until such time as Ghana amends the Constitution, Ghana is encouraged to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
3. DPP has worked in Ghana since 2010, supporting the Legal Resources Centre and diplomats working towards abolition. In 2022/2023, DPP led two delegations to Ghana, with support from the British and Australian High Commissions in Accra, to engage with parliamentarians and to provide technical advice and support on legislative reforms to end capital punishment. DPP also submitted a memorandum to the President of Ghana and all parliamentarians, endorsed by the Commonwealth Lawyers Association, to raise awareness of issues surrounding capital punishment and to address human rights violations in the use of the death penalty.
4. **Kenya:** The Penal Code (Amendment) Bill 2023 has been introduced which seeks to abolish the death penalty and replace it with life imprisonment. The bill has been published and introduced by the National Assembly for its first and second reading. If the amendment bill is successfully adopted and passed in Parliament, it would see the abolition of the death penalty in the country.
5. **Zimbabwe:** In November 2023, a Private Member's Bill was brought to abolish the death penalty through the amendment to the Criminal Law Code and the Criminal Procedure and Evidence Act. The motion was adopted by the National Assembly and the Bill was gazetted in December 2023. In February 2024, the Cabinet announced that it backed the

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<sup>1</sup> [PRESS RELEASE: A Huge Win for Human Rights - Ghana Abolishes the Death Penalty | The Death Penalty Project](#)

bill. Whilst Zimbabwe has had a moratorium on executions for more than 18 years the courts can hand down death sentences for murder committed in ‘aggravating circumstances’ by men aged between 21 and 70. Women are already exempted from capital punishment in Zimbabwe.

6. Since 2015, DPP has worked closely with parliamentarians, diplomats and partner organisation Veritas. This includes commissioning and producing academic research<sup>2</sup>, to ensure that political dialogue on the death penalty is well-informed.

Legal challenges to the death penalty per se

7. **Guyana:** DPP led a ground-breaking constitutional challenge to the death penalty *per se* in Guyana, the only retentionist country in South America, where 17 people are currently on death row. In the case of *Gordon, Greenidge & Harte v The State Guyana* the Court of Appeal of Guyana delivered judgment in December 2022, with this case leading to three men being removed from death row. While the Court of Appeal declined to find the death penalty unconstitutional, the case led to assurances from the State that the death penalty would not be sought against the three men in a resentencing exercise.<sup>3</sup>
8. Following this, DPP – working with leading lawyers from Guyana and Trinidad and barristers from Doughty Street Chambers (UK) – filed an appeal against the death penalty *per se* with the Caribbean Court of Justice (CCJ). In July 2023, DPP received judgment from the CCJ, who dismissed the challenge as ‘academic’ as the appellants no longer faced the death sentence and the State had provided an assurance that the death penalty would not be sought, as noted. The CCJ did indicate, however, that the death penalty was not ‘saved law’ as held by the Court of Appeal and therefore open to a *per se* challenge in an appropriate case.
9. **Kenya:** DPP is supporting a group of former death row prisoners who are leading a challenge against the legality of the death penalty in Kenya. A petition has been filed with the High Court of Kenya, in the case of *Morris Kaberia and Dickson Mwangi Munene vs The Honourable Attorney General and The Director Public Prosecutions*. DPP has convened a team of lawyers in Kenya and barristers from Doughty Street Chambers (UK), in coordination with the Katiba Institute. The team has drafted substantive submissions, drawing on expert testimony of academics - who have assisted in the *per se* challenge in Guyana – and on the empirical evidence from research that DPP has commissioned (see points 18 & 19).
10. **Taiwan:** DPP is supporting the Taiwan Alliance to End the Death Penalty (TAEDP) and Taiwanese lawyers in a challenge to the legality of the death penalty before the Constitutional Court. The case before the Constitutional Court is a class action on behalf of all 37 individuals on death row and is due to be heard on 23<sup>rd</sup> April 2024. DPP

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<sup>2</sup> [Time to abolish the death penalty in Zimbabwe: Exploring the views of its opinion leaders | The Death Penalty Project](#)

<sup>3</sup> [PRESS RELEASE - Guyana’s Court of Appeal refuses to declare the death penalty unconstitutional | The Death Penalty Project](#)

has prepared expert submissions that will be included in the National Human Rights Commission's written arguments and oral presentation to the Court.

### **Safeguards guaranteeing the protection of the rights of those facing the death penalty**

#### **A. Prohibition of the mandatory use of the death penalty**

11. **Trinidad & Tobago:** Following the decision of the Judicial Committee of the Privy Council in *Chandler v The State (2002)* UKPC 19, refusing to declare the mandatory death penalty unconstitutional in Trinidad and Tobago, DPP assisted individuals on death row to seek individualised resentencing exercises where a death sentence has become unlawful by reason of delay. Those who had been on death row for longer than five years required legal support to obtain a determinate sentence and the prospect of release. DPP obtained the order for the resentencing of nine death row prisoners.

#### **B. Fair trial guarantees**

12. DPP has secured several fair trial guarantees through the cases it has won before the Privy Council.

13. In February 2024, the High Court of Trinidad and Tobago granted immediate release to eight people<sup>4</sup> who were previously on death row. These men had been convicted of murder in 2002 and sentenced to death, due to the mandatory death penalty for murder. Their death sentences were quashed by the Privy Council in 2006 as it would have been unconstitutional to carry them out due to the time they had spent on death row. The Privy Council substituted these with life sentences. In a subsequent appeal, the Privy Council quashed the eight men's life sentences, remitting a decision on an appropriate sentence to the High Court of Trinidad and Tobago. The High Court judge reflected individual factors in their new sentences, such as the ages of the men at the time of the offence, if they had demonstrated remorse, and whether they had shown signs of rehabilitation throughout their time in prison, as well as any previous convictions. Deciding that a life sentence was inappropriate on the facts of the case, all men received new individualised fixed term sentences of imprisonment, ranging between 30 and 32 years. They were released in recognition of time served.

14. In November 2023, Wenceslaus James was released by order of the High Court of Trinidad and Tobago. Convicted for murder in 1996, Wenceslaus received the mandatory death sentence. Having spent over three decades in custody, including 24-years on death row, he was the longest serving death row inmate in the country. Mr James was convicted under the felony-murder principles. Had his case been heard now, based on the current law, the death sentence would not be mandatory, and he would be sentenced to a fixed term of imprisonment. The High Court resented Mr James to a

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<sup>4</sup> A ninth man was resentenced, but not released by the High Court this month, due to an unrelated conviction. The eight men release are Michael Maharaj, Damien Ramiah, Seenath Ramiah, Samuel Maharaj, Bobby Ramiah, Daniel Gopaul, Richard Huggins, and Mark Jaikaran.

determinate sentence, which he has already served. He was subsequently released from prison.<sup>5</sup>

### **C. Methods of execution and prohibition of public executions**

15. **Japan:** A Japanese legal team has three death penalty cases pending in the Osaka District Court. The approach of these cases is to stop executions by challenging execution protocols. This includes challenging the constitutionality of hanging as a method of execution, the practice of providing notification of execution on the same day as the execution itself, and the execution of a death sentence during the retrial. DPP is assisting this legal team on its challenge to hanging by sharing submissions on the cruelty of hanging, domestic and international caselaw, and expert evidence that we have drawn on previously before domestic courts and international tribunals.

### **D. Right to seek pardon or commutation**

16. **Kenya:** In July 2023, President William Ruto commuted all death sentences imposed before 21 November 2022, following the recommendations of the Power of Mercy Advisory Committee.

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<sup>5</sup> [PRESS RELEASE: Longest serving death row prisoner in Trinidad & Tobago released by High Court | The Death Penalty Project](#)